P.R. No. 3006/05
Presented by Shri Anand Keshwani
dated 24/11/05
Single Bench

समक्ष माननीय उच्च न्यायालय छत्तीसगढ़, बिलासपुर

(द्वितीय व्यवहार अपील क्रमांक - 534 / 05)

अपीलार्थी / वादी — आशुतोष आत्मज हरे कृष्ण किर्तनीया
उम्र 62 वर्ष, पेशा - कृषि,
निवासी ग्राम-अजबनगर, थाना-जयनगर,
तह.-सूरजपुर, जिला - सरगुजा (छ.ग.)

विरूद्ध

उत्तरवादीगण / प्रतिवादीगण — 1 (i) गांधी विश्वास आ. कालीपद विश्वास, उम्र-41 वर्ष
(ii) नारायण विश्वास आ. कालीपद विश्वास, उम्र-39 वर्ष
(iii) ~~तुलसी~~ दिलेश्वर विश्वास आ. कालीपद विश्वास, उम्र-36 वर्ष
(iv) ~~किशोरी~~ किशोर विश्वास आ. कालीपद विश्वास, उम्र-31 वर्ष
सभी निवासी ग्राम-अजबनगर, थाना-जयनगर,
तहसील - सूरजपुर, जिला - सरगुजा (छ.ग.)
छत्तीसगढ़ शासन द्वारा
जिलाध्यक्ष सरगुजा छत्तीसगढ़

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द्वितीय व्यवहार अपील अंतर्गत धारा-100 व्य.प्र.सं. न्याय शुल्क विचारण एवं प्रथम अपीली न्यायालय अनुसार 30/- (तीस रूपये) चस्पा

(29)
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मामला क्रमांक S.A. 534 **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

19.7.2006

S.A.No.534/2005

Shri M.A.Latif Rehman, counsel for the appellant.

Shri Sunil Tripathi, counsel for the respondents on Caveat Petition No. 86/2005.

Heard Shri Rehman on admission.

Order passed as follows:

ORAL ORDER

(19.7.2006)

This is the plaintiff's Second Appeal, filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 12.9.2005, passed in Civil Appeal No.6-A/2003 by the First Additional District Judge, Surajpur, District-Surguja (CG). The plaintiff lost in both the Courts.

The brief facts are that the plaintiff filed a suit for declaration of his title and also for permanent injunction in relation to three plots, admeasuring 7 acres, situated in village-Ajab Nagar, P.C. No.36, R.I. Circle, Pilkha, Tehsil- Surajpur, District- Surguja. The suit, which was filed on 11.9.1993 was based on the pleadings of adverse possession. The plaintiff contended that he is holding the possession of the said land since the year 1963 and was unobstructedly occupying the said land;

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

therefore, he has perfected his title by way of possession and a decree in the aforesaid nature be passed in his favour. The suit was opposed by the defendants. Defendant No.1 died during the pendency of the suit and was substituted by his legal representatives, who contested the suit.

The trial Court mainly framed issues on adverse possession. The point of adverse possession was decided as issue No.1 by the trial Court and it was held that the plaintiff, though was in possession of the suit land for certain period, has not perfected his title by way of adverse possession. Against the aforesaid judgment and decree, passed by the trial Court, the plaintiff filed the First Appeal before the lower appellant court. The lower appellate court also took the similar view and dismissed the appeal filed by the plaintiff, confirming the judgment and decree passed by the trial Court. It is against this judgment and decree, passed by the Court below, the plaintiff has filed this Second Appeal under Section 100 of the Code of Civil Procedure.

Learned counsel for the appellant argues that the courts below committed an error of law by not holding that the plaintiff has perfected his title by way of adverse possession. His

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

submission is that the finding is not in accordance with the law and the appeal be admitted for hearing.

The law in relation to the adverse possession is well settled. If a plaint is filed, pleading the factum of adverse possession, it is the duty of the plaintiff to plead and prove that his possession was adverse to the interest of the original owner of the property. Not only this, he will also have to clearly prove that when his possession became adverse and if he is holding the possession on permissive basis, he is further required to plead and prove about the denial of title of the original owner and ouster to the knowledge of the said owner. The law requires that denial of title and animous to hold adversely be proved by direct evidence or by unequivocal conduct. It is not necessary that ouster of possession must be by violent or intimidating expulsion or repulsion or under notice of the adverse holding to the other side.

In order to constitute ouster, there should be an intention to exclude the other side and such intention may be expressed either by assertion of exclusive title or by denial of the title or by merely keeping out of possession the actual owner in spite of his protest. That is to say that not only the long possession is merely required for the purpose of adverse possession, there

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

must be an animous to hold the possession adverse to the original owner. If all these points are lacking and the period of possession of 12 years has not been completed along with these elements, the question of perfection of title by adverse possession does not arise.

Even otherwise also, one peculiar feature in this case is that admittedly this land belongs to the Rehabilitation Department of the State Government and the State Government is the owner of the suit land and for this reason also, a decree for declaration of title by way of adverse possession in the suit filed against the defendants in the above manner, making State as a formal party, was not possible.

The Hon'ble Apex Court in the matter of ***Roop Singh (dead) through L.Rs. Vs. Ram Singh (dead) through L.Rs.***, reported in (2000) 3 SCC Pg. 708 has laid down that " it has to be reiterated that under section 100 C.P.C., the jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve the substantial question of law and it does not confer any jurisdiction on the High Court to interfere with the pure questions of fact while exercising its jurisdiction u/s 100 C.P.C " (See para 7 of the Judgment).

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मामला क्रमांक ..... S.A. 534 ..... **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Again the Apex Court laid down in the matter of ***Thiagarajan and others Vs. Sri Venugopalswami B. Koil and others, reported in (2004) 5 SCC Pg.762*** that "the existence of a substantial question of law is the *sine quo non* for the exercise of jurisdiction under the amended provisions of section 100 C.P.C." (see para 20 of the judgment). All these pronouncements go to show that unless a substantial question of law is involved in a case, no second appeal would be entertainable by the High Court exercising jurisdiction under section 100 C.P.C.

In the opinion of this Court, there appears to be no illegality in the concurrent findings recorded by the 2 Courts below. There appears to be no merit in this appeal as the appeal does not involve any substantial question of law. The appeal is dismissed at the motion stage itself. No orders as to costs. The caveat petition stands discharged.

Sd/-
Sunil Kumar Sinha
Judge

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P.T.O.